IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 136 of 1989

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

NAGINBHAI M PATEL

Appearance:

1. Criminal Appeal No. 136 of 1989

MR KT DAVE, APP A for Appellant No.

NOTICE SERVED for Respondent No. 1,5

..... for Respondent No. 2-4

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 28/06/2004

ORAL JUDGEMENT

1. The State of Gujarat, by filing present Criminal Appeal under Sec.378 of CrPC, has challenged the impugned

judgment and order of acquittal passed by ld. Judicial Magistrate, First Class, Rajpipla (JMFC for short) in Criminal Case No.2133/1987 on 17.10.1988.

2. The respondents accused were chargesheeted for the offences punishable under Sections 325, 323, 504 & 114 of Indian Penal Code and under Sec.135 of Bombay Police Act. According to the case of the prosecution, incident took place on 29.3.1987 at about 17.30 hours where a group of persons had gathered at the spot of incident and one worker was distributing Badges of agitation of agriculturists known as "Khedut Andolan". At that time, scuffle took place with the complainant. According to the prosecution, accused no.1 Naginbhai gave stick blow on the right hand of injured Dahyabhai Bavabhai, accused no.2 gave a stick blow to injured Dahyabhai Bavabhai on the back portion of his body as well as on his head. There was exchange of filthy words. Ld. JMFC, after conducting regular trial, ultimately found that the prosecution has failed to bring home the charges levelled against the respondents accused and, therefore, vide impugned judgment, acquitted all the respondents accused by giving them benefit of doubt.

3. I have gone through the judgment and relevant evidence. Ld. APP Mr. Dave has also read over relevant evidence. Considering the material improvement and other contradictions emerging from record and some exaggerations made by the prosecution witnesses, the Court has recorded finding by holding that the prosecution has failed in bringing home the charge beyond reasonable doubt. It is pertinent to note that some witnesses even were not supported by the medical evidence. Undisputedly, no notification published under Sec.37(1) of the Bombay Police Act was produced on record. So, while dealing with the charge punishable under sec.135 of Bombay Police Act is concerned. The Court has recorded clear acquittal in para-5 of the judgment. This Court adopts the reasons assigned by the ld. JMFC for recording acquittal and, therefore, it is not necessary to assign independent, separate reasons or re-write the judgment. As per the settled legal position, the jurisdiction of this Court while dealing with acquittal appeal is very limited. Merely because this Court could have reached to some other conclusion, that by itself, would not legally sufficient to set aside the acquittal.

4. For the reasons aforesaid, there is no merits in this appeal and the same is hereby dismissed. The judgment and order passed by ld. Judicial Magistrate,

First Class, Rajpipla in Criminal Case No.2133/1987 on 17.10.1988, acquitting the respondents accused for the offences for which they have been tried, is hereby confirmed.

[C.K. BUCH, J]

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